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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Streamlining the Commission's)
Rules and Regulations for Satellite)
Application and Licensing Procedures)

IB Docket No. 95-117

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REPLY COMMENTS OF HUGHES COMMUNICATIONS GALAXY, INC.

This proceeding is another step in the Commission's continuing efforts to streamline its regulation of the satellite industry. *See* Streamlining of the Commission's Rules and Regulations for Satellite Application and Licensing Procedures, Notice of Proposed Rulemaking, IB Docket No. 95-117, FCC 95-285, released August 11, 1995 ("Notice"). In its initial comments in this proceeding, Hughes Communications Galaxy, Inc. ("HCG"), along with most other industry commenters, supported the majority of the Commission's recommendations, particularly its proposal to permit space stations to be constructed (but not operated) without the need for the prior issuance of a construction permit issued by the Commission.

A. Construction of Space Stations Should Not Be Regulated

In recognition of the benefits of prompt construction of space stations, the Commission has proposed to allow "potential applicants" to commence construction after acknowledging to the Commission that they are doing so at their own risk and that they will gain no licensing preference by early construction. Notice at ¶¶ 7-8. The Commission did not, however, propose any procedures for this pre-construction notification. In the initial round of comments, HCG argued that the Commission should adopt its proposal to eliminate the construction permit requirement, and allow potential applicants to construct spacecraft

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after affirming, in a one-time or annual filing, that construction is at their own risk. *See* Comments of HCG at 2.

Nearly every commenter supported the elimination of these Section 319(d) waivers. *See, e.g.,* Comments of Orbital Sciences Corp. at 2-3; Comments of AT&T at 2-3; Comments of PanAmSat at 2-3; Comments of GE American Communications Corp. at 3-4; Comments of Motorola at 2-3; Comments of HCG at 2-3. Loral QUALCOMM voiced the only opposition to this proposal, asking the Commission to retain the Section 319(d) waiver process "pending the development of revised procedures for licensing space stations." Comments of Loral QUALCOMM at 4. Because, as the Commission clearly stated, early construction will have no effect upon licensing, Loral QUALCOMM's request is misplaced. *See* Notice at ¶¶ 7-8.

Two commenters agreed with the Commission's proposals, but recommended procedures or prerequisites that would interfere with the Commission's goal of promoting flexibility in space station construction. *See* Notice at ¶ 8. Motorola, for example, suggests that the Commission allow construction only after the submission of a "minimally qualified application." Comments of Motorola at 3. GE Americom proposes that a notification should be filed upon signing the contract with a satellite supplier or when an affiliate begins to "expend resources" for construction, accompanied by an application, and placed on public notice. Comments of GE Americom at 4.

The Commission should reject these proposals. As stated in the Notice, "potential applicants" -- not actual applicants -- may commence construction upon notification. *See* Notice at ¶ 7. The proposals of GE Americom and Motorola are antithetical to the Commission's determination that it has little regulatory interest in the

construction of space stations by potential applicants. In fact, GE Americom's suggestion that the Commission require notification upon "expending resources" or signing a contract perpetuates a major problem that exists under the present system: deciding when construction has actually "commenced." See Comments of GE Americom at 4. Nor should the Commission adopt a notification or application requirement that would simply serve to disseminate confidential business information, such as the timing of construction or the number of space stations under construction, which would not be available in an unregulated industry. HCG therefore reiterates its suggestion that a potential applicant be required, in a one-time or annual filing, to state to the Commission simply that any space station construction without a Commission authorization will be conducted at its own risk.

B. The Commission Should Allow Inclined Orbit Operations Upon Notification

The Commission also proposed to adopt a notification procedure for inclined orbit operations, in light of the ITU's removal of its five degree inclination excursion limitation and the absence of any evidence of interference created by inclined orbit operations. See Notice at ¶ 15-16. The Commission was careful to note that this policy would not impede the introduction of new satellite technology. *Id.*

Opinions on this proposal differed, though most Commenters supported the elimination of inclined orbit applications in favor of a notice requirement. See, e.g., Comments of GE Americom at 4-5; Comments of Keystone Communications Corp. at 2-3; Comments of AT&T at 5-6; Comments of HCG at 4. PanAmSat, the only commenter to favor the retention of inclined orbit applications, expressed the concern that the lack of an application process would permit "warehousing" of orbital locations, because the Commission would not be able to monitor space station usage through a notification

procedure. Comments of PanAmSat at 5-6. PanAmSat's unexplained and unsupported concern is misplaced. The Commission has made clear that it will remain vigilant in enforcing license terms and will not allow inclined orbit operations to interfere with the emergence of new satellite technology. Regardless of whether inclined orbit operations are permitted as a matter of right or require prior authorization, a user no longer has a right to the orbital location for the remainder of its term, if any, if a new satellite is ready to use that site.^{1/} See Notice at ¶ 16.

Some other Commenters object not to the elimination of the application requirement, but rather ask the Commission to require prior notification of inclined orbit operations. See, e.g., Comments of Keystone at 2 (120-day prior notice should be required); Comments of Home Box Office at 4 (30 days). Prior notification would be cumbersome and unnecessary, eviscerating the Commission's streamlining goals. The Commission should adopt its proposal to allow inclined orbit operations to commence subject to subsequent notification by the licensee within 30 days.

C. The ASIA Database Should be Updated

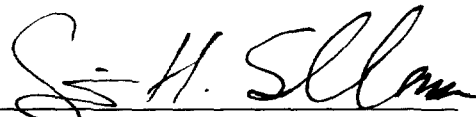
HCG supports the proposals of GE Americom for updating the ASIA database. In particular, GE Americom proposed that the ASIA database should include information regarding the most-and-least-interfering carriers, the lowest carrier power desired for protection, and a two-degree mask for video services. Comments of GE Americom at 17. HCG also joins GE Americom in urging the Commission to safeguard individual operator information from public disclosure by merging such information in the database.

1. Indeed, Commission grant of an inclined orbit application may afford the user a more persuasive claim to the location than the user would have in a mere notification regime.

D. Conclusion

The Commission's proposals to streamline its satellite rules have received broad support from the industry. With the input received from HCG and other commenters, the new rules should relieve much of the regulatory burden placed on the industry.

Respectfully submitted,
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October 25, 1995

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CERTIFICATE OF SERVICE

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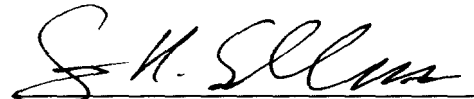
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